

October 11, 2013

June D. Hayes, Ph.D  
Commissioner City of Rialto  
424 E. Victoria St  
Rialto, CA 92376

Re: Your Request for Advice  
**Our File No. A-13-132**

Dear Ms. Hayes:

This letter responds to your request for advice regarding the honoraria provisions of the Political Reform Act (the "Act").<sup>1</sup>

### **QUESTION**

As a Utilities Commissioner in the City of Rialto in San Bernardino County, may you work as an instructor at the Community Center?

### **CONCLUSION**

Yes. The Act's honoraria ban does not prohibit you from working as an instructor at the Community Center.

### **FACTS**

You are a Utilities Commissioner in the City of Rialto (San Bernardino County) and have full disclosure for purposes of filing your Statement of Economic Interests (Form 700). You also work as a clinical psychologist. Recently, the City of Rialto's magazine, *Rialto Progress*, indicated a desire for instructors for the Community Center. Instructors receive money from community participants for these classes (not money directly from the city). Fees vary but seem to average about \$40 per month from each individual. The oversight commission for this

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

department is the Parks and Recreation Commission. As a Utilities Commissioner, you have no input or vote related to Parks and Recreation activities.

You are interested in teaching a class, which may be on parenting skills or stress management.

### ANALYSIS

Section 89502 prohibits public officials from accepting honoraria from individuals from whom they are required to report receipt of gifts, and because you have full disclosure for purposes of filing your Form 700, the Community Center would be a reportable source. Section 89501(a) includes in the definition of honorarium “any payment made in consideration for any speech given....” Literal application of this definition could arguably prohibit designated employees from receiving money for teaching.

However, Section 89501(b) states that “honorarium” does not include “earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade or profession, such as teaching....” Therefore, the issue is whether you will be engaging in bona fide teaching by being an instructor for courses at the Community Center.

Commission Regulation 18932.2 partially addresses the question of whether certain teaching assignments are “bona fide.” The regulation states, for example, that teaching at a government approved or independently accredited college or university is presumed to be bona fide teaching for purposes of the honorarium restrictions. You have not stated whether the Community Center is accredited by any governmental body or organization. However, the regulation is not and was not intended to be the exclusive standard for determining whether a person subject to the honorarium prohibition is engaged in bona fide teaching. Ultimately, the Commission must look at the circumstances and evaluate factors such as the nature of the institution which offers the course, the course subject, the persons to whom the course is offered and the compensation offered. (*Tribe* Advice Letter, No. A-93-049).

Based on the information you have provided, it appears that you will be engaged in bona fide teaching. The Community Center offers courses on a regular basis. Given the number and variety of classes offered, it appears that the numerous persons serviced by the Community Center are diverse in their interests and do not represent a particular interest group. Furthermore, the compensation offered to you for teaching these courses appears to be an amount that is the same as or less than that customarily paid for teaching similar courses. Therefore, Section 89502 does not prevent you from teaching these courses.

Please note that this letter does not address issues relating to incompatible activities or other provisions of state law which may restrict your ability to earn income outside of your state employment.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Sukhi K. Brar  
Counsel, Legal Division

SKB:jgl